INDONESIA

In 1998, the U.S. trade deficit with Indonesia was approximately $7.0 billion, an increase of $2.4 billion from the U.S. trade deficit of $4.7 billion in 1997. U.S. merchandise exports to Indonesia were approximately $2.3 billion, a decrease of $2.2 billion (49.5 percent) from the level of U.S. exports to Indonesia in 1997. Indonesia was the United States' 40th largest export market in 1998. U.S. imports from Indonesia were $9.3 billion in 1998, an increase of $147 million (1.6 percent) from the level of imports in 1997. The stock of U.S. foreign direct investment (FDI) in Indonesia in 1997 was about $7.4 billion, a decrease of 1.7 percent from the level of U.S. FDI in 1995. U.S. FDI in Indonesia is concentrated largely in the petroleum, manufacturing and financial sectors.

Overview

Indonesia continued to endure in 1998 a period of economic turmoil that commenced in July 1997 as Asian currencies, including the rupiah, began to depreciate. In response to deteriorating macroeconomic conditions, the Government of Indonesia (GOI) has been working with the International Monetary Fund (IMF) on an economic reform program since October 1997. This stabilization package has been modified several times, most significantly in January 1998 and again in June 1998 following the resignation of President Soeharto. The latter versions of the program expanded the focus of earlier programs to cover the entire range of economic challenges facing Indonesia. These include fiscal policy, monetary policy, structural reform and deregulation, corporate debt and bankruptcy proceedings, banking sector reform and restructuring, restoration of trade financing to promote exports, food security, the distribution system and social safety net policies. The program provides for unprecedented and accelerated structural reforms in virtually every sector of the economy and major changes in the trade regime.

Despite the sharp economic downturn in Indonesia, the Indonesian Government has undertaken structural reforms to dismantle the national car and aircraft programs, reduce tariffs on agricultural commodities and industrial goods, eliminate export taxes, and disband marketing monopolies. Indonesia appears to be implementing its border liberalization and internal market reforms captured in the IMF memoranda from October 1997 to date, although careful monitoring is warranted given the ambitious scope of liberalization involved and the relatively low level of commercial activity in 1998. Although implementation has been slow in several areas and serious problems remain with the banking system and outstanding corporate debt, the changes being implemented are substantial improvements in the operating environment for businesses in Indonesia.

The major, recently articulated concerns of U.S. industry include: high tariffs and taxes; unpredictable issuance of regulations and licenses; issuance of new regulations without implementation procedures, causing arbitrary interpretations; lack of intellectual property protection; widespread corruption; a court system unable to enforce legal contracts; an underdeveloped legal system that makes negotiation of credit facility documents difficult; laws that only provide for guarantees and not security interest; non-existent credit reporting; and underdeveloped capital markets.

IMPORT POLICIES

In recent years, Indonesia has liberalized its trade regime and taken a number of important steps to reduce protection. The Indonesian Government did so by issuing periodic deregulation packages that have incrementally reduced overall tariff levels, simplified the tariff structure, removed restrictions, replaced nontariff barriers with more transparent tariffs, and encouraged foreign and domestic private investment. In conjunction with its IMF stabilization program, the government has issued reform decrees that stipulate the reduction of taxes, tariffs and quantitative restrictions on exports and imports.

Tariffs

In 1998, Indonesia continued to reduce tariffs. As part of its economic reform program, the government has been implementing a general program of tariff reduction in which it included significant tariff reductions on food and agricultural goods, an area previously heavily protected. In February 1998, the government reduced tariff rates on non-food agricultural products by 5 percentage points and will cut them to a maximum of 10 percent by 2003. Tariffs on all food items were cut to a maximum of 5 percent effective April 1, 1998. Indonesia's applied tariff rates range from 5 to 30 percent. Major exceptions to this range are the 170 percent duty applied to all imported distilled spirits and the 125 percent duty assessed built up passenger vehicles (subject also to a 75 percent import surcharge equaling total import taxes of 200 percent on these vehicles). Automobile complete knockdown kits (CKD) are assessed import duties that range from zero to 65 percent, depending upon the vehicle category and local content incorporated. All processed goods are subject to a 10 percent value-added tax. A luxury tax ranging from 20 percent to 35 percent is also levied on certain products. For example, the combination of tariff, VAT, and luxury tax results in an applied tariff of 271 percent for imported wine. The auto luxury taxes are assessed based on the net selling price, engine size and local content levels. Despite Indonesia's tariff reductions as specified in their IMF Memoranda of Economic and Financial Policy (MEFP), companies in several sectors fear that non-competitive practices will continue once the economic crisis has abated. Several current tariff rates are temporary and unbound. These rates are lower than Indonesia's commitments under the Uruguay Round bound tariff rate, and are therefore believed to be vulnerable to increases by Indonesia.

In May 1995, the Indonesian Government unveiled a comprehensive tariff-reduction package covering roughly two thirds of all traded goods, designed to reduce most tariffs to under 5 percent by 2003. The package stipulated that all tariff items with a rate of 20 percent or less would be reduced to no greater than 5 percent by 2000, and items with rates of more than 20 percent would be reduced to no more than 20 percent by 1998, and 10 percent by 2003. Exclusions from these tariff cuts for chemical, metal, and agricultural products have been removed, leaving in place the exclusion for automobiles. This tariff reform generally extends Indonesia's commitments under the Association of Southeast Asian Nations (ASEAN) Free Trade Area (AFTA) on an MFN basis.

U. S. industries have expressed concern over access to Indonesian markets which remains restricted by various trade barriers. These complaints cite arbitrary valuations for tariff assessments, and tariffs and luxury taxes imposed on imported products (in addition to a 10 percent VAT applied to all processed goods): large motorcycles (150 percent import duty; 35 percent luxury tax), toys (10-20 percent import duty), wine (40 percent import tariff; 35 percent luxury tax; 2.5 percent local service tax), distilled spirits (170 percent import tariff; 35 percent luxury tax), air conditioning and refrigeration equipment (10-15 percent tariff; some items subject to 20 percent luxury tax), forest products (0-10 percent tariff), and soda ash (5 percent tariff).

As of January 1999, 59.4 percent of Indonesia's tariff lines were assessed import duties ranging between 0 and 5 percent. Indonesia's average unweighted tariff is 9.5 percent, compared to 20 percent in 1994. In the Uruguay Round market access negotiations, Indonesia committed to bind 94.6 percent of its tariff items, mostly at ceiling bindings of 40 percent. Exceptions to the 40 percent binding include automobiles, iron, steel, and some chemical products. In accordance with the WTO Agreement on Agriculture, Indonesia has agreed to tariffy its nontariff barriers on agricultural products. Some of the exceptions to the 40 percent tariff bindings are still heavily protected. For example, when the Indonesian Government lifted the import ban on completely built-up cars in 1993, it replaced the ban with duties of up to 200 percent and import surcharges of 100 percent. The import levies were decreased in a subsequent deregulation package, but tariffs of up to 125 percent are still compounded by import surcharges of up to 75 percent on completely built-up models. Indonesia has committed to remove import surcharges on items bound in the Uruguay Round by the year 2005. Indonesia's pioneer auto program (see also "Investment Barriers"), was found to be in violation of Indonesia's WTO commitments by the WTO dispute settlement Appellate Body in July 1998, upholding the earlier Panel finding.

Quantitative Restrictions

Before agreement on Indonesia's IMF program, the sole importer and distributor of major bulk food commodities, such as wheat, rice, sugar, and soybeans, was the National Logistics Agency (BULOG), a state trading entity. Prices of these commodities were often higher than world market prices or heavily subsidized. As a result of the IMF stabilization program, the role of the National Logistics Agency (BULOG) has been sharply curtailed. Current regulations now permit private companies to import and distribute wheat, wheat flour, soybeans, garlic, and sugar. BULOG retains the authority to maintain the country's rice stabilization program and therefore continue imports as needed. At the present time, the BULOG maintains the exclusive right to import rice. This state trading of rice prevents U.S. rice exporters from having direct access to the Indonesian market. BULOG no longer imports any other commodities. Local content regulations on dairy products were eliminated on February 1, 1998. Indonesia has agreed to phase out all quantitative import restrictions other than those justified for health, safety, environment, and security reasons by the end of the IMF program period (November 2001). Also, there are quantitative restrictions on imports of wines and distilled spirits, and industry complains that only a small portion is allocated for domestic sales with the majority going to duty-free stores.

Import Licensing

The government continues to reduce the number of items subject to import restrictions and special licensing requirements. Approximately 160 tariff lines still remain subject to restrictive import licenses, down from 261 in 1994 and 1,112 lines in 1990. However, some U. S. industries continue to express concern over Indonesia's license and quota system that operates as a de facto ban on imports such as motorcycles, wine, and films. For goods that continue to be regulated, the following import license categories exist (number of affected tariff lines provided in parentheses): registered importers,-- alcoholic beverages {only 2 companies approved since 1983} (27), hand tools (6); producing importers -- artificial sweeteners (3), propylene granules (2),engines and pumps (5), tractors (3), knocked-down electronic keyboards (1), and scrap materials (57); approved importers/sole agents -- motor vehicles (47); state oil company PERTAMINA -- lube oil (3); PT Dahana -- explosives (4). In accordance with Indonesia's WTO commitments, the nontariff barriers on items not controlled by state trading agencies will be removed over a ten-year period.

STANDARDS, TESTING, LABELING AND CERTIFICATION

In May 1990, the Indonesian Government issued a decree that states that the Department of Health must decide within one year of receipt of an application whether to grant registration for new foreign pharmaceutical products. In practice, registration can take much longer, although companies report the process is slowly improving. Foreign pharmaceutical firms have complained that copied products sometimes become available on the local market before their products are registered.

Revised maximum pesticide residues (MRLs) for all food commodities were announced in August 1996. These MRLs are largely consistent with the international CODEX standards. The United States has commented on the unworkability of Indonesia's WTO notification that shipment-by-shipment certification would be required. U.S. industry reports that all foods, including distilled spirits, must undergo a costly, complex, and barrier-laden registration process with the Ministry of Health every four years.

GOVERNMENT PROCUREMENT

The government is in the process of revising its law on government procurement, which was enacted in 1994. Most large government contracts are financed by bilateral or multilateral donors each of which imposes its own procurement requirements. For large, government-funded projects, international competitive bidding practices must be followed. The government seeks concessional financing, which includes a 2.5 percent interest rate, a 25-year repayment period, and a 7-year grace period. In May 1998, the government and state-owned enterprises began to investigate some possible procurement and contracting irregularities in response to domestic demands to eradicate corruption, collusion, and nepotism.

Some projects do proceed on less concessional terms. Foreign firms bidding on certain government-sponsored construction or procurement projects may be asked to purchase and export the equivalent in selected Indonesian products, but this rarely occurs. Government departments and institutes and state and regional government corporations are expected to utilize domestic goods and services to the maximum extent feasible, but this is not mandatory for foreign-aid-financed goods and services procurement. State-owned enterprises that have offered shares to the public through the stock exchange are exempted from government procurement regulations.

Some U.S. companies have expressed concern with regard to Indonesian procurement policies requiring local participation and content, that in many situations impede U.S. companies' ability to compete in this market. Non-transparent government procurement policies have also rendered competition difficult. Concerns, in particular, have focused on the engineering and construction industries.

Foreign joint ventures are not eligible to tender for government pharmaceuticals procurement. The requirement that doctors employed in government institutions prescribe only listed generic drugs also prevents the procurement of foreign pharmaceutical products. Foreign companies are generally prohibited from competing in the generic drug market whose prices are controlled. Because of the economic crisis during 1998, the price of pharmaceuticals in the private sector has increased by up to 100 percent. There are current government discussions over whether to expand the list of generic drugs and give subsidizes for purchases of raw materials from overseas.

In January 1998, the GOI issued a presidential decree regulating cooperation between the government and the private sector in the provision and/or management of new infrastructure projects. The decree requires that infrastructure projects, including independent power projects, be publicly tendered on a competitive basis rather than negotiated with a single preferred company. The decree also contains provisions for the legitimate use of intellectual property in projects. The government announced in December 1998 that negotiations with independent power projects over the terms of their power purchase agreements would begin in February 1999, in light of changing price and demand forces in Indonesia.

EXPORT SUBSIDIES

Since 1992, the Indonesian Government has offered rediscount facilities for "special exporters." The program had previously been restricted to certain industries, but in January 1999 its coverage was extended to qualifying exporters from any industry. Exporters may sell their export letters of credit or other instruments to the central bank, Bank Indonesia (BI), through foreign exchange banks. BI rediscounts the export drafts at SIBOR for special exporters and SIBOR plus one for general exporters. In September 1998, in an effort to get trade financing moving again, the government announced a credit guarantee program that guarantees up to 80 percent of the value of letters of credit, minimizing commercial risk for Indonesian banks. The government also maintains several credit programs that provide subsidized loans, primarily to agriculture and small and medium businesses.

Companies producing 65 percent for export may apply for restitution of import duties paid on inputs that are subsequently re-exported in a finished form. Import-duty exemptions may also be granted for capital equipment, machinery, and raw materials needed for the initial investment. Companies located in bonded or export-processing zones pay no duty until the portion of production destined for the domestic market is released, at which time duty is owed only on that portion.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Under the Special 301 provisions of the 1988 Omnibus Trade and Competitiveness Act, the U.S. Trade Representative raised Indonesia to the "priority watch list" in 1996, from the "watch list" where it had been since 1989. It remained on the "priority watch list" in 1997 and 1998. Given the severe economic downturn, Indonesia has not been able to devote significant human or financial resources to either improving or enforcing its intellectual property regime.

IPR protection shortcomings mentioned by industry include: software, video and VCD piracy, pharmaceutical patent infringement, apparel trademark counterfeiting; audiovisual market access barriers; inconsistent enforcement and an ineffective legal system; and amendments to the copyright, patent and trademark laws that are not completely TRIPs consistent. The Indonesian Government often responds to U.S. companies that raise specific complaints about pirated goods and trademark abuse, but the court system can be capricious, and punishment of pirates of protected intellectual property is very rare. In the view of some U.S. firms, the lack of sophisticated intellectual property protection laws and regulations acts as a considerable disincentive for industries to invest substantially in high technology projects in Indonesia. Amendments to the patent, trademark, and copyright laws enacted in 1997 were intended to bring Indonesia's laws into compliance with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), but industry has raised questions in certain areas.

Indonesia has acceded to the following international conventions on intellectual property: the Paris Convention for the Protection of Industrial Property; the Berne Convention for the Protection of Literary and Artistic Works (Paris 1971)[with a reservation on Article 33]; the WIPO Copyright Treaty, the Patent Cooperation Treaty; the Trademark Law Treaty; the World Intellectual Property Organization Copyright Treaty; the Nice Agreement for the International Classification of Unclassified Goods and Services; and the Strasbourg Agreement Concerning the International Patent Classification. Indonesia is a member of the World Intellectual Property Organization (WIPO).

Patents

Indonesia's first patent law went into effect on August 1, 1991. The amended law passed in 1997 improved the situation to some extent. For example, the term of protection has been extended to 20 years with a two-year extension period; a patent shall be canceled only in the event the patent holder fails to pay annual fees within a certain time; use of product or process invention before grant of patent shall constitute a patent infringement; and the Article in the prior law that denied the right to prevent importation was deleted to comply with Article 28 of the TRIPs Agreement. Also, Indonesia now provides product patent protection for foods and beverages. In some areas, improvements were made that were not required by the TRIPs

Agreement. For example, the definition of the term "patent examiner" was enlarged to include examiners in other industrial property offices. This could facilitate work-sharing in the search and examination process. Also, the exclusion from patentability for plant and animal varieties was deleted.

Unfortunately, some of the problems in the previous law were not corrected and new problems were introduced by the 1997 amendment. Examples include: importation still does not meet the requirement to "work" or exploit the invention domestically as required by the first paragraph of TRIPs Article 27; the right to prevent importation of products made by patented processes is available only if the process is also worked in Indonesia; the content of voluntary patent licenses is more restricted than permitted by TRIPs Article 40; there is no requirement that Government use of patented invention comply with the provisions of TRIPs Article 31; inventions that are contrary to Indonesian laws and regulations are excluded from patentability in violation of Article 4 of the Paris Convention and TRIPs Article 2; and the standard for excluding inventions contrary to the ordre public is inconsistent with the requirements of paragraph 2 of TRIPs Article 27.

U.S. pharmaceutical industries feel that Indonesia's current patent law wording is suitably ambiguous so to be difficult to fight patent infringement cases. Furthermore, they remain concerned that the present patent law does not satisfy the TRIPs requirements; that it includes compulsory licensing provisions, a provision allowing the import of certain patented raw materials; and law and regulations on local working requirements and patent cancellation. The Pharmaceutical Research and Manufacturers of America (PhRMA) also pointed out the incidence of smuggled counterfeit drugs to neighboring countries, the issue of corruption, joint venture requirements, generic drug prescriptions and supply to government institutions and taxation.

Trademarks

The April 1993 trademark law provides for determination of trademark rights by registration rather than by first use. The law provides for protection for well-known marks but offers no procedures or grounds for owners of well-known marks to clear the trademark register of existing registrations infringing on well-known marks. Currently, the only avenue for challenging existing trademark registrations in Indonesia is to bring a court challenge. Cancellation must be sought within five years from the date of registration. U.S. companies have found it difficult to protect their well-known marks, since judicial and administrative processes can be very time consuming and unreliable. Injunctive relief is not provided, even when a lower court invalidates false trademark registrations. The 1997 amended trademark law enhances protection by providing for administrative cancellation of registrations competing with well-known marks.

The International Anticounterfeiting Coalition (IACC) has stressed the problems surrounding the protection of well-known marks; specifically, the length of time it takes the system to consider challenges to trademark applications, the ability of Indonesian nationals to file applications for well-known marks and the inconsistent application of trademark laws. The complaint is also that the existence of the amended law has not resulted in effective protection or enforcement of IPR.

Copyrights

In 1997, Indonesia enacted amendments to its copyright law that generally brought it closer to conformity with international standards for copyright protection. The law includes provisions to: recognize rental rights for copyright holders in the areas of audiovisual, cinematographic, and computer software, which are protected as literary works; adds protections for neighboring rights in sound recordings and rights of producers of phonograms; copyright licensing; and increases the term of protection for many copyrightable works to fifty (50) years, as required under the TRIPs Agreement.

Indonesia

A bilateral copyright agreement between the United States and Indonesia that went into effect in August 1989 extended national treatment to each other's copyrighted works. The Indonesian Government recognizes the problem of copyright piracy and indicated that it is willing to work with copyright holders against piracy, but enforcement is still poor. Since 1996, there has been rampant piracy of video compact disks (VCDs) in Indonesia which has disrupted the market for cinemas, as well as sale and rental markets for legitimate videos and laser disks. In November 1998, the government announced that sellers of pirated VCDs had until late February to convert to selling legitimate product, after which it would begin stringent enforcement. U.S. industry reports that the government recently has carried out a few well publicized anti-piracy raids that netted a sizable amount of pirate optical media products on the verge of export. However, the Motion Picture Association feels that there will be no anti-piracy enforcement until the Indonesian Government regains control of the public order.

The major problems cited by the International Intellectual Property Alliance (IIPA) with the Indonesian copyright regime are the following: copyright infringement of business software, Video Compact Discs (VCD), laser discs, video games and books; market access restrictions; insufficient enforcement efforts; an ineffective court system and deterrence penalties; restrictions on importation, distribution and retailing by other than 100% owned Indonesian companies; a ban on foreign investment in cinema construction and development of video retail outlets; and restrictions on videocassette duplication.

New Technologies and Trade Secrets

Biotechnology and integrated circuit layout designs are not protected under Indonesian intellectual property laws. The government is in the process of preparing laws on trade secrets, industrial designs, and integrated circuits. Indonesia is a member of the World Intellectual Property Organization (WIPO) and is a party to the substantive provisions of the 1934 London Text of the Paris Convention for the Protection of Industrial Property.

SERVICES BARRIERS

Despite some loosening of restrictions, particularly in the financial sector, services trade barriers to entry continue to exist in many sectors. Foreign accounting firms must operate through technical assistance arrangements with local firms, and citizenship is a requirement for licensing as an accountant. Foreign agents and auditors may act only as consultants and cannot sign audit reports. Foreign law firms cannot establish a legal practice in Indonesia. Indonesian citizenship as well as graduation from an Indonesian legal facility or an institution recognized as the equivalent is a requirement to be admitted to the bar. Foreign consulting engineers can operate only by forming a joint-venture with local partners in Indonesia.

Distribution

Indonesia has been gradually liberalizing distribution and its agreement with the IMF calls for an end to restrictions on trade in the domestic market. In February 1998, restrictive marketing arrangements for cement, paper, cloves, other spices, and plywood were eliminated. Indonesia is also opening wholesale and retail trade to foreign investment. In September 1998, the government issued a decree stipulating that distribution and retail companies may be 100 percent foreign owned, canceling the 49 percent foreign ownership limit previously in effect. The regulation carries a requirement that foreign firms (PMA) establish “partnership participation” with a domestic small scale enterprise, but the details of how this requirement will be interpreted and applied are not yet clear.

Indonesia

A number of U.S. companies have expressed concern that existing restrictions increase costs and impede their ability to effectively market and service their products in Indonesia, thereby limiting choice and competition, e.g., films and videos. Express delivery firms have expressed concern with their inability to wholly own or control express firms in Indonesia, obtain courier licenses, truck licenses, customs brokerage licenses or bonded warehouse licenses, and to self-handle their aircraft in Indonesia.

GP Farmasi (local Pharmaceutical Association) has agreed to implement a Code of Marketing Practices which is adapted from IFPMA, IPMG and the Philippine Association codes. The Pharmaceutical Research and Manufacturers of America has expressed concern that local companies do not abide by such a code.

Indonesia's Hardwood Plywood Marketing Board (APKINDO) was abolished as a marketing cartel February 1, 1998. There are no longer any restrictions on pricing, product mix or shipping arrangements. This could offer increased opportunities to U.S. exporters of panel products, but the U.S. industry reports that the wood products industry is still heavily managed and influenced by the government.

Financial Services

In its December 1997 WTO financial services offer, Indonesia committed to allow 100 percent foreign ownership for non-bank financial companies that are publicly listed, including insurance and securities firms. The government also guaranteed the access of existing financial services firms in its market. Restrictions on joint venture banks, where the foreign ownership limit is 85 percent, were retained in the WTO offer. Also, multi-finance companies with a foreign partner require 100 percent more paid-in capital than domestic/locally owned multi-finance companies. However, in November 1998, the government passed amendments to the 1992 banking law that now allow 100 percent foreign ownership of Indonesian banks. Indonesia committed to removing discriminatory capital requirements on financial firms by the end of 1998 but legislation is still pending. All insurance in Indonesia must be purchased from either a domestic or joint venture company. The only exceptions are for unavailability of coverage in Indonesia and total foreign ownership of the insured entity.

Banking: As of January 1999, the banking sector in Indonesia was slated for massive recapitalization with government assistance. Consolidation is expected. The World Bank, Asian Development Bank, and the IMF were closely involved in the restructuring plans. Restrictions on branching and sub-branching for joint venture banks and foreign branches were lifted in 1998.

Securities: In 1998, the government removed restrictions on foreign ownership of securities firms, pursuant to its offer in the WTO financial services agreement.

Motion Picture Market Access

Indonesia prohibits foreign film and videotape distributors from establishing branches or subsidiaries. All importation and distribution is restricted by the film law to 100 percent Indonesian-owned companies. Importation and in-country distribution of U.S. films must be handled through a single organization, the European and American Film Importers' Association (AIFEA). The quota on videotape imports was removed in 1998 but annual import quotas still apply to foreign films. Duties, taxes, licensing, and other necessary payments also act as barriers to the film industry.

Telecommunications Services

In the WTO negotiations on basic telecommunications services, Indonesia made several commitments that, with one exception, did not go beyond the status quo. Its adoption of the reference price on regulatory principles was a welcome step. It set a foreign investment limit of 35 percent for telecommunications services companies. Indonesia maintained excessively long periods for existing restrictions on the number of services providers and made no guarantee of allowing unrestricted market access to international services in 2005, long distance in 2006, or local services in 2001. Fixed line services, including local and domestic long distance services, telex services, etc., must be provided in conjunction with the partially privatized national firm PT Telkom. Indonesia retained an economic needs test for mobile cellular and PCS providers.

INVESTMENT BARRIERS

The Indonesian Government is committed to increasing foreign investment and to reducing burdensome bureaucratic procedures and substantive requirements for foreign investors. Indonesian law provides for both 100 percent direct foreign investment projects and joint ventures with a minimum Indonesian equity of 5 percent. In 1998, the government opened several previously restricted sectors to foreign investment, including harbors, electricity generation, telecommunications, shipping, airlines, railways, roads, and water supply. Some sectors remain restricted or closed to foreign investment and are implemented through a “negative list.” The most recent negative list was issued in July 1998 and includes television and radio broadcasting, theatrical exhibition, both film and video distribution, and forest concessions.

Foreign capital investment is primarily governed by the foreign capital investment law, as well as by presidential and ministerial decrees. The Capital Investment Coordinating Board (BKPM) and other relevant agencies must approve all proposed foreign-manufacturing investments in Indonesia. The approval process is not used to block or restrict foreign investment. Obtaining the required permits, however, can be cumbersome and time-consuming. The most often heard complaint from investors about the Capital Investment Coordinating Board is that it is not a one stop investment shop. Investment in petroleum extraction, mining, forestry, telecommunications, and banking is covered by specific laws and regulations and handled by relevant technical agencies. Joint ventures with a majority Indonesian share, or in which Indonesians own 45 percent of shares and in which at least 20 percent of total stock is sold through the Indonesian stock market, are treated as domestic companies for certain purposes. This includes the ability to borrow short-term working capital in rupiah from state banks.

In 1996, the Indonesian Government issued a regulation under which tax exemptions may be provided to certain companies. This "tax holiday" was originally conceived as a way to attract large investments which Indonesia believed it was losing to other countries in the region with better tax incentives. The program was never fully implemented, however, and the government is in the process of revising it to target specific industries to stimulate both domestic and foreign investment.

Indonesia has notified the WTO regarding measures that are inconsistent with its obligations under the WTO Agreement on Trade-Related Investment Measures. The measures deal with local content requirements for utility boilers. Proper notification allows developing country WTO Members to maintain such measures for a five-year transitional period after entry into force of the WTO. Indonesia therefore must eliminate these measures before January 1, 2000. The United States is working in the WTO Committee on TRIMs to ensure that WTO Members meet these obligations.

Auto Policies: the 1993 Measures and the 1996 Pioneer Program

By virtue of the successful challenge by the United States, the EU and Japan of the WTO consistency of Indonesia's auto policies, Indonesia must bring its auto policies into compliance with the report of the WTO dispute settlement panel examining Indonesia's auto programs. The WTO panel issued its final report in June 1998, finding that the provision by Indonesia of local content subsidies under both its 1993 Program and its National Car Program violates Article III of the GATT and Article 2 of the Agreement on TRIMs. The panel also found that the extension of certain of these subsidies to automobiles imported from Korea violates Article I of the GATT. When this panel ruling is implemented by the Government of Indonesia, the various policy elements that conferred the benefits associated with " National Car" status will be addressed and removed as a barrier to U.S. exports.

The Government of Indonesia indicated its intention to fully comply with the recommendation and rulings of the DSB adopted on July 23, 1998. The GOI stated that the February 1996 car program had been revoked on January 21, 1998 and that Indonesia would meet its WTO obligations with regard to the 1993 car program no later than October 23, 1999. The Government of Indonesia has further specified in writing that the Indonesia firm intended to be the producer of the national car, PT Timor, will be required to reimburse the Government of Indonesia for the import duties and luxury taxes owed on the KIA sedans imported from Korea. On October 6, the EU requested WTO arbitration to determine the reasonable time period of implementation of the DSB rulings on the 1993 program. The United States participated in the arbitration process that resulted in the ruling that Indonesia must implement fully by July 23, 1999, or twelve months from the date of the panel report adoption.

OTHER BARRIERS

Transparency

A lack of transparency and corruption are significant problems for companies doing business in Indonesia, and the government has stepped up efforts to address these concerns. Demands for "facilitation fees" to obtain required permits or licenses, government award of contracts and concessions based on personal relations, and a legal system that is often perceived as arbitrary are frequently cited problems. A 1996 report from Bappenas (the National Planning and Development Board) recognized the judicial system's shortcomings and noted the "need to reform judicial administration to ensure the speedy resolution of conflicts and an effective appeals system." It also called for improving " the skills and performance of legal and judicial personnel by strengthening ethical and professional standards, transparency, and accountability." Much of the substantial deregulation introduced since July 1997 and popular demands for investigations into corrupt, collusive, and nepotistic practices are aimed at tackling some of the problems which either countenance these problems or which have arisen from them. The parliament is in the process of considering a bill intended to regulate anti-competitive behavior.